

Ram Krishan Sharma Vs. State of Rajasthan and Others

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Court : Rajasthan

Decided On : Jan-31-2012

Judge : Dalip Singh & the Hon'ble Mr. Justice S.S. Kothari

Appeal No. : D.B. Civil Writ [Habeas Corpus] Petition No. 68 of 2010

Appellant : Ram Krishan Sharma

Respondent : State of Rajasthan and Others

Judgement :

This habeas corpus petition was filed by Ram Kishan Sharma, the petitioner after his daughter Kumari Sonam Sharma who was the student of Class 11th of Tangore Public School, Mansarovar, Jaipur who went missing on or before 13th March, 2010.

A report being F.I.R. No.138 of 2010 was registered at Police Station Mansarovar, Jaipur in this respect for an offence under Sections 363 and 366 I.P.C. and in which one Chandra Shekhar son of Shri Nathu Lal was also named as an accused, as it was believed by the petitioner that he was responsible for having kidnapped his daughter Kumari Sonam.

As Kumari Sonam Sharma could not be traced and the petitioner was not satisfied with the investigation, he presented this habeas corpus petition on 14.06.2010 before this Court in which apart from the officials of the State, Chandra Shekhar, his parents and family members were also arrayed as respondents.

This Court ordered that notices to be issued to the counsel for the State with further direction to trace and produce Kumari Sonam, the detinue before this Court. Despite the aforesaid directions having been issued in June, 2010 Kumari Sonam could not be traced and nor could the accused Chandra Shekhar be traced and produced before the Court.

Several opportunities were granted and the last order came to be passed on 05.12.2011 wherein again on the request of the respondents eight week's time was allowed to the respondents to produce the detinue before the Court for submit the progress report of the investigation with further direction that the application submitted by the petitioner for transferring the case to the C.B.I. would also be taken up on the said date, in case the detinue is not traceable.

We may add here that earlier also on 17th of March, 2011 this Court had inquired from the petitioner as a period of one-year had elapsed since Kumari Sonam had gone missing and was not traceable whether the petitioner was keen to have the case transfer to the C.B.I., but at that point of time the petitioner was not keen for the transfer of the case to the C.B.I. and wanted the Rajasthan Police to investigate the matter.

The order dated 05.12.2011 recording the various proceedings that have taken place before this Court reads as follows:-

This petition was filed on 14.6.2010 after daughter of the petitioner went missing since March, 2010 and it was alleged that one Chandra Shekhar who is respondent No.4 herein was responsible for having kidnapped the daughter of the petitioner.

As nothing happened after lodging of FIR No.138/2010 at Police Station Mansarovar, Jaipur for the offence under Sections 363 and 366 IPC, the petitioner approached this court by way of this habeas corpus petition. Notices were ordered to be issued on 23.06.2010 and since then the time is being sought by the respondents for production of the detinue. Today, the respondents are stating before this court that they are unable to locate the detinue as well as Chandra Shekhar despite their best efforts. On 17.03.2011 after one year when nothing

happened, this Court even inquired from the petitioner whether he would like that the case may be transferred to the CBI; at that point of time learned Counsel for the petitioner was having confidence in the Rajasthan Police and submitted that he was not keen on transferring the investigation to the CBI. However, learned Counsel for the petitioner submits that he has now moved an application that now this matter may be transferred to the CBI as the Rajasthan Police has not been able to locate either to the daughter of the petitioner or the accused.

On 06.09.2011, this Court had directed that the matter should be brought to the notice of the DGP with the direction to ensure recovery of the detainee, Sonam Sharma. However, today again the DCP (South) and ACP as well as SHO, Mansarovar, Jaipur are present. They have submitted that they have not been able to locate the detainee as well as the accused so far and some more time may be allowed. It was also submitted that the SHO has joined recently in the month of October as the earlier SHO has been transferred. The ACP, Mansarovar has also joined recently about a month ago. In our earlier order dated 17.03.2011, we had directed the DCP (South), Jaipur for constituting a fresh team on the assurance that he would personally supervise the investigation and give guidance to the team investigating the matter. However, we find that the matter remains where it was and prima facie it does appear that the grievance of the petitioner that the case may be transferred to the CBI requires consideration for the Court to recommend to the State Government for transferring of the matter to the CBI.

Learned Counsel Shri Yadav appearing on behalf of the respondents submitted that one more opportunity may be granted to the respondents to make all out efforts for tracing the detainee as well as the accused so as to produce her before the court.

On the request of the learned Counsel for the respondents, we direct that the Commissioner of Police, Jaipur would assign this case to the special team in the Crime Branch attached to the Commissionerate of Police under supervision of an ACP (of the rank of Dy.S.P.) and few more persons including an officer of the rank of Inspector who would go through the case diary of the investigation conducted so far and proceed in a systematic manner analyzing all possible angles and

proceeding with each trail to its logical conclusion and submit a detail report before this Court of the investigation carried out by them and examining each of piece of evidence collected so far and which may be gathered by them.

As a last opportunity before considering the application of the petitioner for transferring the case to the CBI, we grant eight weeks' time to the respondents as prayed for tracing the detenue and produce her before this Court.

Let a copy of this order be sent to the Commissioner of Police, Jaipur for compliance and to the Director General of Police and the Home Secretary for information.

Put up after eight weeks, as prayed. In case the detenue and the accused are not traced, the Commissioner of Police and DG Police shall remain personally present in Court during the hearing of the matter on 31st January, 2012.

List this matter on 31st January, 2012.

Since the detenue was not available and could not be produced before this Court today, the D.G.P., along with other officers of the Rajasthan Police are present and an application seeking exemption from attendance of petitioner and the Commissioner of Police has also been filed.

Let the said application be registered.

On the grounds mentioned in the application, we grant exemption from personal appears to the Commissioner of Police, Jaipur.

The D.G.P., informed this Court that a special team had been constituted under a Deputy Superintendent of Police for investigation of this case and locating Kumari Sonam and the accused. The newly constituted team carried out the investigation and was of the view on the basis of investigation carried out that Kumari Sonam has been taken away by the accused Chandra Shekhar and they are presently in all probabilités not residing within the State of Rajasthan and are in hiding somewhere out side the State.

It has also been submitted that interrogation of the family members and the relatives, including the wife of the accused has been carried out as Chandra Shekhar was reported to be previously married to one Sheela and having two children also.

We find that since the investigation carried out so far has not resulted in production of the detainee before this Court and the investigation has also revealed that in all probabilities the accused having taken away Kumari Sonam out of the State of Rajasthan and are in hiding somewhere outside the State, we deem it just and proper to allow the application filed by the petitioner for transfer of the case to the Central Bureau of Investigation as the case has assumed inter-state ramifications and the central agency would be better suited for locating and tracing the detainee and the accused, in the facts and circumstances which have been brought to light by the investigation carried out so far by Rajasthan Police.

We would, therefore, direct the State of Rajasthan and the Secretary Home, Government of Rajasthan for issuing necessary notifications for transfer of the case to the Central Bureau of Investigation. Necessary steps for transfer of the case and handing over the case diary with the progress report of the investigation to the Central Bureau of Investigation to their Office in Jaipur be carried out within two weeks from today.

Let a copy of this order be sent to the Secretary Home, Government of Rajasthan for necessary compliance with an advance copy to the D.I.G., C.B.I., Tilak Marg, Jaipur.

It is further directed that this case stands consigned to record with the direction that as soon as the detainee or the accused are traced by the C.B.I., the C.B.I., would inform this Court by means of an application for taking up the matter and passing necessary orders. The C.B.I. shall also take all necessary help and assistance from the petitioner and the Investigating Officer who has led the team, including the S.H.O., Mansarovar for conducting the investigation in this matter. Liberty is also granted to the petitioner for reviving the matter or seeking additional direction, if so required.

Consequently, the application and the writ petition stands disposed of.

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